

**AGENDA  
ITEM  
NO. 8.b**

**LAFCO** *of Monterey County*

**LOCAL AGENCY FORMATION COMMISSION**  
P.O. Box 1369 132 W. Gabilan Street, Suite 102  
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**KATE McKENNA, AICP**  
Executive Officer

**DATE:** September 28, 2009

**TO:** Chair and Members of the Formation Commission

**FROM:** Kate McKenna, AICP, Executive Officer

**SUBJECT: REFERRAL TO BUDGET AND FINANCE COMMITTEE TO DEVELOP  
A DRAFT POLICY REGARDING DEFERRAL OF REQUIRED  
PAYMENTS TO FUND THE COMMISSION'S ANNUAL BUDGET**

**SUMMARY OF RECOMMENDATIONS:**

It is recommended that the Commission discuss the attached report from General Counsel Leslie J. Girard, and refer to the Budget and Finance Committee the development of a draft policy regarding the deferral of required payments to fund the Commission's annual budget.

**EXECUTIVE OFFICER'S REPORT:**

On September 14, the Budget and Finance Committee considered the issue of underpayment of local agency contributions to the Commission's annual budget. The Committee is composed of City Member Ralph Rubio (Chair), County Member Simón Salinas, and Special District Member Tom Perkins. General Counsel Girard attended the meeting and responded to questions about options available to the Commission.

After discussion, the Committee unanimously recommended that the Commission consider the array of options available to address the issue, and refer the matter back to the Committee for development of a draft policy. General Counsel Girard has prepared the attached report in response to the Executive Officer's request for information on options available to the Commission. He has offered to assist in preparing draft policy language to establish a process and criteria for providing payment relief (but not forgiveness) under specific circumstances. If the Commission so directs, a draft policy would be considered first by the Budget and Finance

Committee and then by the full Commission. Those meetings, agendas and reports will be noticed to the public and all local agencies.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Kate McKenna".

Kate McKenna, AICP  
Executive Officer

Attachment:

- 1: Report from Leslie J. Girard, General Counsel, to the Executive Officer of the Local Agency Formation Commission of Monterey County, re: Deferral or Forgiveness of Required Payments to Fund the Commission's Annual Budget

# LAFCO *of Monterey County*

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LESLIE J. GIRARD  
General Counsel

## REPORT TO THE EXECUTIVE OFFICER OF THE LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

RE: DEFERRAL OR FORGIVENESS OF REQUIRED PAYMENTS TO  
FUND THE COMMISSION'S ANNUAL BUDGET

DATE: September 21, 2009

FROM: Leslie J. Girard, General Counsel

### INTRODUCTION

Two cities in Monterey County, the Cities of Salinas and Seaside (the "Cities"), have informed you that they will be paying only a portion of their respective required payments to fund the budget for the Local Agency Formation Commission of Monterey County ("Commission") for Fiscal Year 2009-2010. You have asked whether these Cities may unilaterally defer or forego payment, and what remedies the Commission has with respect to the matter.

### QUESTIONS PRESENTED

1. May the Cities unilaterally defer or forego the payment required by Government Code section 56381 to fund the Commission's annual budget?
2. May the Commission adopt a policy governing alternative methods for collection of the required annual payment?

### SHORT ANSWERS

1. No, the Cities may not unilaterally defer or forego payment of the required amounts apportioned for them pursuant to the Government Code.
2. Yes, the Commission may adopt policies that set forth alternative methods of collecting the required payment, which may include payments over time; in no event may the Commission forgive a payment.

## BACKGROUND

Government Code (the "Code") section 56381 governs the Commission's financial affairs, and sets forth the procedure for setting the Commission's annual budget and determining the payment to fund that budget required of the County of Monterey ("County"), and the cities and special districts within the County (all collectively, the "Agencies"). Once the budget is determined, and the required payment apportioned for each of the Agencies, payment is requested from each no later than July 1 of each year.

This year, the Cities have informed you that they will not be making full payment on their respective apportioned amounts.<sup>1</sup> The communications from the Cities do not specifically indicate if the decisions represent a deferral, or if they are foregoing payment of the balance.

## DISCUSSION

### 1. The Cities May Not Unilaterally Defer Or Forego Payment.

The plain language of the Code does not permit the Agencies to unilaterally defer or forego payment of any or all of the required payment. The Code provides that, once apportioned, each Agency pay its respective share no later than July 1 of that year, and there is no language permitting the Commission to forgive the required payment.<sup>2</sup> Allowing for unilateral determinations on deferral or forgiveness obviously creates fiscal, not to mention operational, issues for the Commission, and potentially creates inequities between the Agencies, which fund the Commission's activities. The Commission is not without power, however, to assist Agencies during fiscally challenging times.

### 2. The Commission May Adopt Policies Governing Collection Of The Required Payment.

The Code gives the Commission some flexibility with respect to the required payments. Section 56381 (c) provides:

If the county, a city, or an independent special district does not remit its required payment within 60 days, *the commission may determine an appropriate method of collecting the required payment*, including a request to the auditor to collect an equivalent amount from the property tax, or any fee or eligible revenue owed to the county, city or district.

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<sup>1</sup> Salinas indicated it will be paying only seventy five percent (75%), and Seaside will only be paying seventy four percent (74%) of their respective payments.

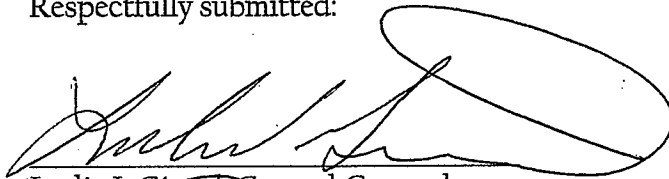
<sup>2</sup> Section 56381 of the Code provides that if the Commission does not have sufficient funds during a fiscal year, the County *may* provide a loan, but this loan must be repaid the following year. This provision reinforces a conclusion that the Commission may not forgive a required payment.

Thus, the Commission may cause the County Auditor to merely transmit to the Commission the necessary funds, but also permits the Commission to determine alternative methods of collection. In my opinion, such different methods could include payments over time, or even deferral to specific times within the fiscal year (for example, once per quarter or similar). The Commission may adopt a policy governing these matters; however, such policies must apply equally to each Agency, and I recommend that qualifying circumstances be identified and findings be required if such deferrals are to be granted by the Commission. In no circumstance may the required payment be forgiven.<sup>3</sup>

### CONCLUSION

The plain language of the Code prohibits the Cities from unilaterally deferring or foregoing any or all of the required payment to the Commission, and prohibits forgiveness by the Commission in any event. The Commission may adopt a policy which provides some relief to Agencies under specific circumstances. I am available to assist in the drafting of such a policy if requested, or if directed by the Commission.

Respectfully submitted:



Leslie J. Girard, General Counsel

LJG:ljg

cc: Senior Analyst Thom McCue

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<sup>3</sup> In the case of bankruptcy or other serious fiscal constraint on an affected Agency, the obligation to make the payment would be determined by the appropriate process, for example by the bankruptcy court.